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6

7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**

9

10 LUIS TORRES, in individual; and  
11 DOROTHY TORRES, a.k.a. DOTTY  
12 TORRES, an individual,

13 Plaintiffs,

14 v.

15 JAYCO, INC., an Indiana Corporation;  
16 and DOES 1-20, inclusive

17 Defendants.

18 Case No.: 5:24-cv-00065-KK (SHKx)

19 (Removed from Riverside Superior  
20 Court—Case No. CVSW2306678)

21 **JAYCO'S NOTICE OF MOTION,  
MOTION TO TRANSFER VENUE  
TO INDIANA FEDERAL COURT  
PURSUANT TO 28 U.S.C. § 1404(A),  
AND MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
OF MOTION TO TRANSFER  
VENUE**

22 Hearing Date: March 14, 2024  
23 Hearing Time: 9:30 a.m.  
24 Courtroom: 3

25 **Action Filed:** August 8, 2023

26 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

27 **PLEASE TAKE NOTICE** that on March 14, 2024, at 9:30 a.m., or as soon  
28 thereafter as counsel may be heard in Courtroom 3 of the above-captioned court,  
located at the George E. Brown, Jr. Federal Building and United States Courthouse,  
3470 Twelfth Street, Riverside, CA 92501-3801, Defendant JAYCO, INC. ("Jayco")  
will move the Court, pursuant to 28 U.S.C. § 1404(a), to transfer venue of this case to  
the United States Federal Court for the Northern District of Indiana in South Bend,  
Indiana, pursuant to the mandatory forum selection clause in its limited warranty.

1        This Motion is made on the following grounds:

2        First, the Court should enforce the forum selection clause because (1) federal  
3 courts generally enforce mandatory forum selection clauses in all but the most extreme  
4 circumstances (none of which apply here); (2) the applicable forum selection clause is  
5 mandatory; and (3) the forum selection clause is reasonable and enforceable, and  
6 Plaintiff cannot demonstrate otherwise.

7        Second, all of Plaintiff's claims in the Complaint (breach of express/implied  
8 warranty under the Song-Beverly Act) will be preserved if this action is refiled in  
9 Indiana, because Jayco will expressly stipulate that California law (including the Song-  
10 Beverly Act) will apply to all Plaintiffs' claims against Jayco in Indiana.

11       The Motion will be based on this Notice of Motion, the attached Memorandum  
12 of Points and Authorities, the Declaration of Tina Slabach, the Complaint, records and  
13 files herein, and upon such evidence and oral argument as may be permitted at the time  
14 of the hearing.

15       This motion is made following the conference of counsel pursuant to L.R. 7-3  
16 which took place on Friday, January 26, 2024.

17       DATED: February 2, 2024

FROST BROWN TODD LLP

19       By: 

20       LIAM E. FELSEN  
21       Attorneys for Defendant  
22       JAYCO, INC.

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FROST BROWN TODD LLP  
LOS ANGELES

1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   **I. INTRODUCTION**

3                   The Jayco Motorized Limited Warranty (the “Jayco Limited Warranty”) which  
4                   accompanied the subject motorhome purchased by Plaintiffs LUIS TORRES (“Mr.  
5                   Torres”) and DOROTHY TORRES a/k/a DOTTY TORRES (“Mrs. Torres”)  
6                   (collectively, “Plaintiff”) contains a mandatory forum selection clause that requires all  
7                   actions relating to any alleged breach of express or implied warranty to be brought in  
8                   the state of manufacture, which is the state of Indiana.

9                   The Court should enforce the forum selection clause because (1) federal courts  
10                  generally enforce mandatory forum selection clauses in all but the most extreme  
11                  circumstances (none of which apply here); (2) the applicable forum selection clause is  
12                  mandatory; and (3) the forum selection clause is reasonable and enforceable, and  
13                  Plaintiff cannot demonstrate otherwise.

14                  In addition, all of Plaintiff’s claims in the Complaint (breach of express/implied  
15                  warranty under the Song-Beverly Act) will be preserved if this action is refiled in  
16                  Indiana, because Jayco will expressly stipulate that California law (including the Song-  
17                  Beverly Act) will apply to all Plaintiff’s claims against Jayco in Indiana.

18                  For these reasons, the Court should grant this motion and immediately transfer  
19                  this case to the United States Federal Court for the Northern District of Indiana in South  
20                  Bend, Indiana.

21                  **II. FACTUAL AND PROCEDURAL BACKGROUND**

22                  On March 30, 2023, Plaintiff purchased a new 2023 Jayco Alante 29F bearing  
23                  VIN # 1F65F5DN9N0A13332 (the “Motorhome”) from Stier’s RV Centers, LLC d/b/a  
24                  Camping World RV Sales (“CWRV”) in Temecula, California. [See Complaint at ¶ 5;  
25                  Declaration of Tina Slabach (“Slabach Declaration”) at ¶ 3 and Exhibit A (Conditional  
26                  Sale Contract and Security Agreement).]

27                  //

28                  //

1           The Motorhome was manufactured in Middlebury, Indiana. [See Slabach  
 2 Declaration at ¶ 4.]

3           Every new Jayco Motorhome—including this one—is sent to dealerships such  
 4 as CWRV with a packet of materials, including an owner’s manual which contains the  
 5 Jayco Limited Warranty. Jayco is aware of no evidence that the subject Motorhome  
 6 was not delivered to CWRV, and then to Plaintiff, without the owner’s manual which  
 7 contains the Jayco Limited Warranty. [See Slabach Declaration at ¶ 5 and Exhibit B.]

8           Under the heading titled “LEGAL REMEDIES” on the last page of the Jayco  
 9 Limited Warranty, in all capitals, is contained the following forum selection clause:

10           “EXCLUSIVE JURISDICTION FOR DECIDING LEGAL DISPUTES  
 11 RELATING TO AN ALLEGED BREACH OF WARRANTY OR ANY  
 12 REPRESENTATIONS, OF ANY NATURE, MUST BE FILED IN THE  
 COURTS WITHIN THE STATE OF MANUFACTURE, WHICH IS  
 13 INDIANA.”

14 [See Slabach Declaration at ¶ 6 and Exhibit B.]

15           After Plaintiff purchased the Motorhome, the applicable Jayco Limited Warranty  
 16 was registered with Jayco in the event that the Motorhome required service pursuant to  
 17 that warranty. [See Slabach Declaration at ¶ 7.]

18           Plaintiff then availed themselves of the Jayco Limited Warranty, seeking service  
 19 from Jayco’s authorized service and repair facility. [See Complaint at ¶ 10-13.]

20           On August 8, 2023, despite the requirement in the Jayco Limited Warranty that  
 21 any suit asserting breach of warranty be filed in the state of manufacture (i.e., Indiana),  
 22 Plaintiff filed a complaint in Riverside County Superior Court alleging express and  
 23 implied warranty-based causes of action for violation of the Song-Beverly Consumer  
 24 Warranty Act. [See Complaint generally.] Thus, in the Complaint, Plaintiff  
 25 acknowledges having received the Jayco Limited Warranty: “Plaintiffs have duly  
 26 performed all the conditions on Plaintiffs’ part under the [Conditional Sale Contract  
 27 and Security Agreement] and under the express and implied warranties given to  
 28 Plaintiffs.” [See Complaint at ¶ 9.]

1           On December 11, 2023, Jayco was served with a copy of the Complaint. On  
 2 January 11, 2024, Jayco removed this matter to the United States District Court, in and  
 3 for the Central District of California, Eastern Division, and the matter was assigned Case  
 4 Number 5:24-cv-00065-KK (SHKx). On January 18, 2024, Jayco filed its Answer in  
 5 this Court.

6           The venue of the Complaint is improper based on the express terms of the Jayco  
 7 Limited Warranty; the proper venue is in the state of Indiana. Jayco has no objection  
 8 to having this case adjudicated in Indiana and as stated throughout this motion, Jayco  
 9 will stipulate to California law—including the Song-Beverly Act—applying to this case  
 10 after it is transferred to Indiana.

### 11          **III.    LEGAL STANDARD/AUTHORITY**

12          A forum selection clause is to be enforced in federal court through a motion to  
 13 transfer venue under section 1404(a), the basis raised by Jayco in this motion. As the  
 14 United States Supreme Court instructed in *Atlantic Marine Const. Co., Inc. v. U.S. Dist.*  
 15 *Court for the Western District of Texas*, 134 S. Ct. 568 (2013), “a forum-selection clause  
 16 may be enforced by a motion to transfer under [28 U.S.C.] § 1404(a)” and not through  
 17 a motion to dismiss pursuant to 28 U.S.C. § 1406(a) for improper venue. The reason for  
 18 this, the Court explained, is that venue may be proper in the forum in which the  
 19 complaint was filed and, therefore, that forum was not “improper” and a motion to  
 20 dismiss would not be in order.

### 21          **IV.    ARGUMENT**

#### 22          A.     **This Case Should Be Transferred to Federal Court in Indiana** 23         **Pursuant to the Mandatory Forum Selection Clause in the Jayco** 24         **Limited Warranty.**

##### 25           1.     **Forum Selection Clauses Generally.**

26          In *Atlantic Marine*, the Supreme Court also reminded that “a proper application  
 27 of § 1404(a) requires that a forum-selection clause be ‘given controlling weight in all  
 28 but the most exceptional cases.’” 134 S.Ct. at 580 (citation omitted). In determining  
 whether a case should be transferred pursuant to a forum selection clause, a plaintiff’s

choice of forum is given no weight. The plaintiff bears the burden of demonstrating that the lawsuit should not be transferred to the forum to which the parties had agreed, and an argument by the plaintiff that the agreed-upon forum is inconvenient should not be a consideration for the Court. *Id.* at 581 The Court specifically elaborated on the reason for this:

When parties have contracted in advance to litigate disputes in a particular forum, courts should not unnecessarily disrupt the parties' settled expectations. A forum-selection clause, after all, may have figured centrally in the parties' negotiations and may have affected how they set monetary and other contractual terms; it may, in fact, have been a critical factor in their agreement to do business together in the first place. In all but the most unusual cases, therefore, "the interest of justice" is served by holding parties to their bargain.

*Id.* at 583.

## 2. The Jayco Limited Warranty's Forum Selection Clause is Mandatory.

While permissive selection forum selection clauses identify a court in which a case may be brought or in which a party has consented to jurisdiction, mandatory forum selection clauses—such as the one in this case—dictate the court in which a lawsuit must be brought. If the latter (permissive) type is included in a contract, there can be more than one court that can exercise jurisdiction over the dispute. However, if a mandatory forum selection clause is used, the parties have consented that only the court or courts identified in the provision may hear disputes between them.

The forum selection clause in the Jayco Limited Warranty is unquestionably a mandatory forum selection clause, as it states that the courts in Indiana have "exclusive jurisdiction" over lawsuits such as the present one, thereby identifying the sole venue for this case. *See, generally, Snapper, Inc. v. Redan*, 171 F.3d 1249, 1262 & n.24 (11th Cir. 1999). The court in *Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817 F.2d 75 (1987), provided examples of provisions which were deemed mandatory forum selection clauses:

//  
//

[I]n *Pelleport [Investors, Inc. v. Budco Quality Theatres, Inc.]*, 741 F.2d 273, 280 (9th Cir.1984)], the language used was exclusive and mandatory: “this Agreement shall be litigated *only* in the Superior Court for Los Angeles (*and in no other*).” In *Full-Sight Contact Lens Corp. v. Soft Lenses, Inc.*, 466 F.Supp. 71, 72 (S.D.N.Y.1978), the court enforced the following language as exclusive: “any dispute . . . *shall be brought* in either San Diego or Los Angeles County.” (emphasis added). In both of these cases it is clear that the language mandates more than that a particular court has jurisdiction. The language mandates that the designated courts are the only ones which have jurisdiction.

817 F.2d at 77-78 9 (citation omitted). In contrast, the provision at issue in *Hunt Wesson Foods* simply stated that “[t]he courts of California, County of Orange, shall have jurisdiction over the parties in any action at law relating to the subject matter or the interpretation of this contract.” (*Id.* at 76.) The court concluded this language invested those courts with jurisdiction over a dispute between the parties but that they were not the sole courts in which litigation had to be pursued.

Here, the Jayco Limited Warranty forum selection clause specifically uses the phrase “exclusive jurisdiction,” which conveys that lawsuits arising from breach of that warranty **can only be brought** in Indiana. *See City of New Orleans v. Municipal Administrative Services, Inc.*, 376 F.3d 501, 504 (5<sup>th</sup> Cir. 2004) (“For a forum selection clause to be exclusive, it must go beyond establishing that a particular forum will have jurisdiction and must clearly demonstrate the parties’ intent to make that jurisdiction exclusive.”) (citation omitted). The Jayco Limited Warranty does not merely contemplate the possibility that such litigation may be brought in Indiana; it intends that such litigation must be brought in Indiana.

Therefore, the provision is mandatory, and the Court should grant this motion because, as discussed below, Plaintiff will be unable to satisfy the burden of proving any deprivation of the ability to pursue rights in an Indiana court.

### 25           3.     **The Jayco Limited Warranty’s Forum Selection Clause Is** 26           **Enforceable.**

27           The Jayco Limited Warranty’s forum selection clause is fully enforceable and  
 28           reasonable, and all actions relating to alleged breaches of that warranty must be brought

1 in Indiana. Even though Plaintiff may cite to the fact that the forum selection clause is  
 2 found in a pre-printed limited warranty and argue, therefore, that it should not be given  
 3 conclusive weight, the United States Supreme Court has held that similar terms are  
 4 enforceable as long as they are not unreasonable or fundamentally unfair. *See, e.g.*,  
 5 *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991) (holding that a forum selection  
 6 clause in a pre-printed ticket for a cruise was both valid and enforceable); *Effron v. Sun*  
 7 *Line Cruises, Inc.*, 67 F.3d 7 (2nd Cir. 1995) (holding a forum selection clause in a pre-  
 8 printed ticket to be valid and enforceable).

9       The burden—and it is a heavy burden—falls on Plaintiff to demonstrate that the  
 10 forum selection clause in the Jayco Limited Warranty should not be applied. *See M/S*  
 11 *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972) (holding that a forum selection  
 12 clause is “prima facie valid and should be enforced unless enforcement is shown by the  
 13 resisting party to be ‘unreasonable’ under the circumstances”). Generally, “[a]bsent  
 14 some evidence submitted by the party opposing enforcement of the clause to establish  
 15 fraud, undue influence, overweening bargaining power, or such serious inconvenience in  
 16 litigating in the selected forum so as to deprive that party of a meaningful day in court,  
 17 [such a] provision should be respected as the expressed intent of the parties.” *Pelleport*,  
 18 *supra*, 741 F.2d at 280.

19       In addition, there is no viable assertion that the forum selection clause was the  
 20 product of fraud or undue influence. *See Richards v. Lloyd’s of London*, 135 F.3d 1289,  
 21 1291 (9th Cir. 1998) (“For a party to escape a forum selection clause on the grounds of  
 22 fraud, it must show that ‘the inclusion of that clause in the contract was the product of  
 23 fraud or coercion.’” (citation omitted)). As Plaintiff cannot present any evidence of such  
 24 fraud or coercion, this court should comfortably order this case transferred to federal  
 25 court in Indiana.

26       Finally, the “serious inconvenience” exception to the enforcement of this forum  
 27 selection clause does not apply to this case. This exception requires the objecting party  
 28 to demonstrate that “trial in the contractual forum will be so gravely difficult and

1 inconvenient that he will for all practical purposes be deprived of his day in court.” *M/S*  
 2 *Bremen, supra*, 407 U.S. at 19. Plaintiff, being residents of California, do not satisfy this  
 3 serious inconvenience exception: “The financial difficulty that a party might have in  
 4 litigating in the selected forum is not a sufficient ground by itself for refusal to enforce a  
 5 valid forum selection clause.” *P & S Business Machines, Inc. v. Canon USA, Inc.*, 331  
 6 F.3d 804, 807 (11th Cir. 2003) (citation omitted).

7 As noted above, the forum selection clause is mandatory, not permissive. As  
 8 Plaintiff is unable to demonstrate that pursuing claims in Indiana would be unfair or  
 9 unreasonable, the Court should grant this motion.

10       B.     **Plaintiff’s Song-Beverly Act Rights and Claims Will Be Preserved if**  
 11       **this Case Goes Forward in Indiana.**

12 Plaintiff’s claims—breach of express/implied warranty under the Song-Beverly  
 13 Consumer Warranty Act—would not be waived after this case is transferred to Indiana.  
 14 Although Plaintiff may fear losing rights that might be asserted under Song-Beverly if  
 15 the Court enforces the Jayco Limited Warranty’s forum selection clause and requires  
 16 Plaintiff to pursue any claims in an Indiana court, Jayco certainly recognizes that the  
 17 California legislature made—with certain exceptions—a buyer’s rights under Song-  
 18 Beverly essentially unwaivable. See *California Civil Code* § 1790.1.

19 Therefore, to allay any concerns in that regard, Jayco will stipulate by this motion  
 20 that California substantive law—including the Song-Beverly Act—will apply to  
 21 Plaintiff’s warranty claims pursued in Indiana (subject to any defenses available to  
 22 Jayco). [See Slabach Declaration at ¶ 8.] Should Plaintiff (or the Court) wish, Jayco  
 23 will sign a stipulation to that effect.

24       In *Verdugo v. Alliantgroup, L.P.*, (2015) 237 Cal.App.4th 141, 158-59, the Court  
 25 contemplated and endorsed just such a stipulation to preserve a Plaintiff’s unwaivable  
 26 rights in the context of a mandatory forum selection clause. The plaintiff—who had  
 27 signed an employment agreement which contained a Texas forum selection clause and  
 28 choice of law provision—brought a class action lawsuit in California; upon the

1 defendant's motion, the trial court stayed the action based on the forum selection clause.  
 2 *Id.* at 146.

3 The Court of Appeals ultimately reversed that order because (1) the defendant  
 4 simply argued that a Texas court *would most likely* apply California law; (2) for that  
 5 reason forcing the plaintiff to litigate in Texas *could have* resulted in the loss of  
 6 unwaivable California rights; and thus (3) the defendant had not met its burden to  
 7 demonstrate why the forum selection clause should not be enforced. *Id.* at 158-59. That  
 8 said, the *Verdugo* court observed that had the defendant—as Jayco proposes here—  
 9 stipulated that California law would apply in Texas, such stipulation would have  
 10 eliminated any uncertainty and would have met the burden of proof related to  
 11 unwaivable rights:

12 [Defendant] could have eliminated any doubt about which law would  
 13 apply to [Plaintiff's] claims by stipulating to have the Texas courts apply  
 14 California law, but it did not do so. Instead, [defendant] acknowledged  
 15 Texas might apply California law while simultaneously minimizing the  
 16 significance of the California statutory rights on which [plaintiff] bases her  
 17 claims. [Defendant] therefore has not shown [Plaintiff's] unwaivable  
 18 statutory rights will not be diminished.

19 ...  
 20 [Defendant] could have eliminated any uncertainty on which law a Texas  
 21 court would apply by stipulating to have a Texas court apply California  
 22 law in deciding [Plaintiff's] claims, but [defendant] did not do so. Instead,  
 23 [defendant] has preserved its ability to argue to a Texas court that it should  
 24 apply Texas law, and [defendant] has hinted at its intention to do so by  
 25 downplaying the significance of the statutory rights [plaintiff] seeks to  
 26 enforce through this action.

27 *Id.* at 145, 158.

28 By stipulating that California law—and Song-Beverly—will apply to Plaintiff's  
 29 claims after the case is transferred to an Indiana court, Jayco has thus “eliminated any  
 30 doubt” and “eliminated any uncertainty” as to which law an Indiana court would apply  
 31 to Plaintiff's claims if this action is refiled in Indiana. Unlike the defendant in *Verdugo*,  
 32 Jayco has thus met its burden to demonstrate that Plaintiff's unwaivable rights as to  
 33 Jayco under Song-Beverly will not be diminished by enforcement of the Jayco Limited  
 34 Warranty's mandatory forum selection clause. Between Jayco's stipulation that Song-  
 35 Beverly will apply to Plaintiff's claims against them and the fact that Indiana has a logical

1 connection with Jayco which is located in that state, the enforcement of the mandatory  
 2 forum selection clause at issue would be neither unreasonable nor unfair.

3 In sum, Plaintiff's unwaivable rights against Jayco provided under California  
 4 substantive law will not be affected by enforcement of the Jayco Limited Warranty's  
 5 mandatory forum selection clause, and the case should be transferred.

6 **V. CONCLUSION**

7 Plaintiff cannot on the one hand avail themselves of the express warranty but  
 8 then seek to dodge that same warranty's terms and conditions. Plaintiff's causes of  
 9 action under the Song-Beverly Warranty Act relate to alleged breaches of  
 10 express/implied warranty, and Plaintiff is therefore subject to the mandatory forum  
 11 selection clause in the Jayco Limited Warranty. Because it is not unreasonable for this  
 12 Court to enforce this clause, Jayco respectfully requests that this court transfer venue  
 13 of this case to the Northern District of Indiana in South Bend, Indiana.

14 DATED: February 2, 2024

15 FROST BROWN TODD LLP

16 By: 

17 LIAM E. FELSEN  
 18 Attorneys for Defendant  
 19 JAYCO, INC.

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CERTIFICATE OF SERVICE2  
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES3  
I am employed in the County of Los Angeles, State of California. I am over the  
age of 18 years and not a party to the within action. My business address is **Frost  
Brown Todd LLP, 633 W. Fifth Street, Suite 900, Los Angeles, CA 90071.**4  
On February 5, 2024, I served the following document(s) on the interested parties  
in this action: **JAYCO'S NOTICE OF MOTION, MOTION TO TRANSFER  
VENUE TO INDIANA FEDERAL COURT PURSUANT TO 28 U.S.C. § 1404(a),  
AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION TO TRANSFER VENUE**

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- 
- by placing the original and/or a true copy thereof enclosed in (a) sealed
- 
- envelope(s), addressed as follows:

9 David N. Barry THE BARRY LAW FIRM 11845 West Olympic Blvd. Suite 1270 Los Angeles, CA 90064	10 Attorneys for Plaintiffs Luis Torres and Dorothy Torres, a.k.a. Dotty Torres 11 Tel: 310-684-5859 Fax: 310-862-4539 12 E-mail: dbarry@mylemonrights.com
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- BY CM/ECF SYSTEM:**
- Participants in the case who are registered CM/ECF
- 
- users will be served by the CM/ECF system.
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- BY REGULAR MAIL:**
- I placed such envelope with postage fully paid in the
- 
- United States mail at Los Angeles, California. I am "readily familiar" with this
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- firm's practice of collecting and processing correspondence for mailing. It is
- 
- deposited with U.S. Postal Service on that same day in the ordinary course of
- 
- business. I am aware that on motion of party served, service is presumed invalid
- 
- if postal cancellation date or postage meter date is more than 1 day after date of
- 
- deposit for mailing in affidavit.
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- BY ELECTRONIC SERVICE:**
- I caused the document(s) to be sent to the
- 
- persons at the electronic notification address listed in the Service List.
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- (Federal) I declare that I am employed in the office of a member of the Bar of
- 
- this Court, at whose direction the service was made.

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Executed on February 5, 2024, at Los Angeles, California.23  
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Julia Evans